

Editor's note: Reconsideration denied by order dated Oct. 30, 1975

MARY Y. PAUL, ET AL.

IBLA 75-499, etc.

Decided July 31, 1975

Consolidated appeals from decisions of the Alaska State Office, Bureau of Land Management, rejecting Native Allotment applications for land within the Tongass National Forest.

Affirmed.

1. Alaska: Native Allotments

Alaska Native allotment applications for lands in the Tongass National Forest are properly rejected where (1) the applications are not founded on use and occupancy of the applicants prior to inclusion of lands within the forest or (2) the Department of Agriculture does not certify that the lands are chiefly valuable for agricultural or grazing purposes.

APPEARANCES: John Silko, Donald E. Clocksin, and John Bosshard III, Esqs., of Alaska Legal Services Corporation, for appellants; Alton G. Gaskill, Esq., Office of General Counsel, United States Department of Agriculture.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

For administrative convenience the Board has consolidated for consideration appeals from decisions of the Alaska State Office, Bureau of Land Management, rejecting Native allotment applications

listed in the Appendix 1/ because the lands applied for are within the Tongass National Forest. None of the applications is founded on personal occupancy commencing prior to the inclusion of the lands within the Forest, nor are the lands certified by the Forest Service as chiefly valuable for agricultural or grazing purposes.

Each appellant asserts ancestral use and occupancy commencing prior to inclusion of the lands within the Forest. However, in each case personal and independent use and occupancy, as distinguished from ancestral use, commenced subsequent to the inclusion of the lands within the Forest.

By reference appellants have incorporated the statements of reasons in Louis P. Simpson, 20 IBLA 387 (June 16, 1975). In Simpson we held that Native allotment applications for lands within the Tongass National Forest may be allowed if (1) the application is founded on occupancy prior to the inclusion of the lands within the Forest, and (2) an authorized officer of the Department of Agriculture certifies that the land in the application is chiefly valuable for agricultural or grazing purposes. We further held that a Native who has applied for an allotment must show that he personally complied with the law in establishing occupancy and use prior to the effective date of the Forest withdrawal, and he may not tack on his parents' or grandparents' use and occupancy to establish a right in himself commencing prior to the creation of the Forest. The Board adheres to its decision in Simpson, supra, and for the reasons set forth therein, the decisions rejecting the several applications covered in these appeals must be affirmed.

Therefore, pursuant to the authority delegated by the Secretary of the Interior to the Board of Land Appeals, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

1/ The applications were filed pursuant to the Act of May 17, 1906, as amended and supplemented. 43 U.S.C. 270-1 through 270-3 (1970). The Allotment Act was repealed by section 18 of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. § 1617 (Supp. III, 1974), but applications pending in the Department at that time could be processed. These are such applications.

We concur:

Edward W. Stuebing
Administrative Judge

Frederick Fishman
Administrative Judge

APPENDIX

IBLA 75-499	AA 6138	Mary Y. Paul
	AA 6567	Chester James, Jr.
	AA 7031	Samuel G. Johnson
IBLA 75-604	AA 6582	James Demmert, Sr.
IBLA 75-605	AA 7628	Martha E. James
IBLA 75-608	AA 8155	Richard Bean
IBLA 75-609	AA 7878	Leo Houston, Sr.
IBLA 75-610	AA 6571	Oscar W. Osborne
IBLA 75-611	AA 6545	Bertina B. Peterson
IBLA 75-627	AA 7925	Robert H. Gray, Sr.
IBLA 75-648	AA 6547	Chester James, Sr.
	AA 7024	William B. Thomas
	AA 7029	Minnie D. Johnson
	AA 6576	George M. Ramos
	AA 7729	Andrew Gamble, Sr.
	AA 7740	John Howard, Sr.
	AA 7751	Helene James
	AA 7813	Violet M. Dalton Blakely
	AA 7827	Herman Davis
	AA 7865	Tommy L. Jackson, Sr.
	AA 7866	Gary Jackson
	AA 7869	Loren Jackson
	AA 7950	Daisy Frank
	AA 7997	Elizabeth Torres
	AA 7998	Mary Jim Joseph
	AA 8006	William P. Aragon
IBLA 75-662	AA 6634	Tommie J. Immie
	AA 7619	Perry Brown
	AA 7621	Alex G. Johnson
	AA 7781	Paul Wilson, Jr.
	AA 7816	Eliza York
	AA 7818	Elsie L. John
	AA 7829	Leonard Gilbert John
	AA 7830	David M. Howard
	AA 7832	Pete Howard
	AA 7875	Robert J. Peratrovich, Sr.
		(Robert J. Peratrovich, Jr., Heir)
	AA 7915	Elizabeth Vivian Houston
	AA 7923	Jessie Gray
IBLA 75-663	AA 6543	George Dalton, Sr.
	AA 6544	Sarah B. Williams
	AA 6641	Margaret Ethel Martin

	AA 7620	George F. Adams
	AA 7782	Franklin Williams
	AA 7932	Helen L. Trout
	AA 8439	Charles M. DeWitt
IBLA 76-2	AA 7747	Raymond Mork
IBLA 76-40	AA 7820	Delores E. Yadao
IBLA 76-46	AA 8023	Peter J. Lundy
IBLA 76-47	AA 7738	David John
IBLA 76-60	AA 7028	George A. Davis
IBLA 76-65	AA 7737	Lillian J. John
IBLA 76-80	AA 8010	Mary J. Johnson
IBLA 76-81	AA 7881	Elsie H. Wilson
IBLA 76-82	AA 7743	Bernice M. Obert

